IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7960 OF 2006.

Pradip Vasudeo Raut. ... Petitioner.

Versus.

Santosh Anant Raut and others. ... Respondents.

Shri R.D.Suryawanshi for the Petitioner.

Shri Krishna N.Kare for the Respondents Nos.1 to 3.

CORAM : ABHAY S.OKA, J.

DATED : 8th February, 2007.

P.C.:

1. Heard the learned Advocate for the Petitioner. By this petition under Article 227 of the Constitution of India, the Petitioner/original Plaintiff has taken exception to the order dated 15th November 2006 by which the trial Court has appointed a Court Commissioner for local inspection by exercising the power under Order XXVI Rule 9 of the Code of Civil Procedure, 1908. Placing reliance on certain decisions of this Court, the learned Advocate for the Petitioner submits that the appointment of Court Commissioner was beyond the scope of the suit.

2. The Petitioner has invoked the power of superintendence of this Court under Article 227 of the Constitution of India. Even assuming that the order is illegal, the power under Article 227 cannot be exercised to interfere with every order which is illegal. In the present case, the Court Commissioner after making

inspection will submit a report to the trial Court. It is always open for the Petitioner to raise objections to the report of the Commissioner. Moreover, under sub-rule (3) of Rule 10 of Order XXVI of the said Code, the Petitioner can always pray for examining the Commissioner on oath. There is no real prejudice to the Petitioner due to appointment of Court Commissioner.

3. In view of this position, no interference is call for with the impugned order. The petition is rejected. Certified copy expedited.

Judge.